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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,875	05/14/2002	Jay A Fournier	021238-503	8681
21839	7590	05/19/2004	EXAMINER	
BURNS DOANE SWECKER & MATHIS L L P			WALLS, DIONNE A	
POST OFFICE BOX 1404			ART UNIT	
ALEXANDRIA, VA 22313-1404			PAPER NUMBER	

1731

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/031,875	Applicant(s) FOURNIER ET AL.	
	Examiner Dionne A. Walls	Art Unit 1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-18, 20 and 22-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3, 5, 7-17, 24, 25 and 27-29 is/are allowed.
- 6) ☒ Claim(s) 2, 4, 6, 18, 20, 22, 23 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Terminal Disclaimer

1. The terminal disclaimer filed on April 22, 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US. Pat. No. 6,289,898 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Re-opening of Prosecution

2. The indicated allowability of some claims of record is withdrawn in view of the newly discovered US. Pat. No. 6,615,840 reference. Rejections based on the newly cited reference follow. Prosecution is, hereby, REOPENED.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 2, 4, 6, 18, 20, 22-23, and 26 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,5 and 10 of U.S. Patent No. 6,615,840. Although the conflicting claims are not identical,

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they are not patentably distinct from each other because the claims of US. Pat. No. 6,615,840 are a combination which includes the subcombination recited in the instant claims.

Allowable Subject Matter

5. Claims 3, 5, 7-17, 24-25 and 27-29 are allowed.

6. The Examiner has determined that the instant claims contain allowable subject matter, for the following reasons:

Applicant has claimed an unobvious improvement over the prior art of record.

Specifically, it would not have been obvious to modify a web/wrapper for a smoking article/cigarette of an electrical smoking system to include the following:

- a filler, therein, being effective to reduce aldehyde content in the mainstream smoke, wherein the filler contains an ammonium-containing compound,
- a filler consisting essentially of magnesium ammonium phosphate and/or calcium ammonium phosphate.

Additionally, the Examiner is persuaded by Applicant's arguments with respect to claims 24 and 27. It is agreed that the prior art of record neither teaches nor reasonably suggests a tobacco web surrounding a tobacco rod, and a paper wrapper surrounding the tobacco web having at least one filler effective for reducing the content of gaseous components in mainstream smoke.

Upon the filing of a Terminal Disclaimer, pursuant to the Double Patenting Rejection, stated above, claims 2, 4, 6, 18, 20, 22-23, and 26 will be in condition for allowance.

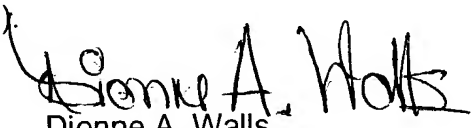
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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne A. Walls whose telephone number is (571) 272-1195. The examiner can normally be reached on Mon-Fri, 7AM - 4:30PM (Every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on (571) 272-1189. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Dionne A. Walls
Primary Examiner
Art Unit 1731

May 13, 2004